

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of M.B.H., Minor.

CRAIG A. SMITH and KELLY N. SMITH,

Petitioners-Appellees,

v

DANIEL FOY HAYDEN,

Respondent-Appellant.

UNPUBLISHED

April 24, 2007

No. 274735

Clinton Circuit Court

Family Division

LC No. 06-019058-AY

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

MEMORANDUM.

Respondent appeals from an order terminating his parental rights to the minor child pursuant to MCL 710.51(6). We affirm.

Respondent first argues that the trial court abused its discretion in failing to appoint an attorney to represent him during the termination hearing. We disagree. Respondent failed to raise the issue in the lower court and, therefore, the issue is not preserved for appellate review. Nevertheless the trial court did not abuse its discretion in failing to do so. “In cases which may result in nonconsensual termination of the parental rights of a noncustodial parent under stepparent adoption provisions of the Michigan Adoption Code, MCL 710.51(6), the probate court has discretionary authority to appoint counsel to assist an indigent noncustodial parent in contesting the termination of parental rights.” *In re Sanchez*, 422 Mich 758, 761; 375 NW2d 353 (1985). The record reflects that respondent failed to request an attorney under MCR 3.915(B). Additionally, the facts and issues of the case were so simple that, even though petitioners were represented by counsel, they did not have an unfair advantage over respondent. The entire testimony was transcribed in approximately 25 transcript pages, and the sole issue was whether respondent provided the child with financial support or visited the child for over two years. Though given the opportunity to do so, respondent declined to cross-examine the petitioners. Respondent was able to defend himself by arguing that the mother interfered with his relationship with the child. At that point, the issue became one of credibility. Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent next argues that the trial court erred in terminating his parental right where MCL 710.51(6)(b) was not proven. We disagree. Respondent correctly points out that a trial court may find that, although a noncustodial parent's contacts were insufficient, he did not have the ability to contact the minor child because the other custodial parent resisted his attempted contacts. *In re ALZ*, 247 Mich App 264, 274; 636 NW2d 284 (2001). Still, there was very little evidence that respondent did much to contact the child over the years. He claims he sent the mother several letters in the six months following their separation and then essentially gave up. He did nothing to enforce his parental rights in the courts. Respondent knew where the mother and child lived and did almost nothing for four years to see the child.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Stephen L. Borrello